

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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In re:

Daniel J. Stebnitz,  
Debtor

Case No. 13-32097 BEH  
Chapter 7

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Michael F. Dubis, Trustee in Bankruptcy,  
  
Plaintiff

v.

Adversary No. 15-02016-BEH

Joshua B. Stebnitz, Nichole M. Salazar,  
Molly J. Stebnitz, and Kathi J. Stebnitz,

Defendants,

and

Daniel J. Stebnitz,

Intervenor.

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MOTION TO COMPROMISE ADVERSARY ACTION

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Lawrence Clancy, attorney for Michael F. Dubis, Trustee in Bankruptcy of the  
above-named estate, moves the Court for an order authorizing the compromise of the

above adversary action for the reasons stated below, pursuant to Federal Rule of

Lawrence Clancy  
Stafford Rosenbaum LLP  
1200 North Mayfair Road, Suite 430  
Milwaukee, WI 53226-3282  
Phone: 414.982.2878  
Fax: 414.982.2889  
[lclancy@staffordlaw.com](mailto:lclancy@staffordlaw.com)

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Bankruptcy Procedure 9019. The Trustee moves the Court for such authority assuming no objections to said compromise are timely filed, heard and sustained:

1. The Debtor filed this bankruptcy proceeding on September 10, 2013.
2. On January 29, 2014, an order was entered authorizing the Chapter 7 Trustee to employ Michael F. Dubis, S.C., pursuant to an application filed on January 20, 2014.
3. On November 13, 2014, a Stipulation for Substitution of Attorney for Trustee, Subject to Approval of the Court, was filed by the Trustee to employ Lawrence Clancy as Attorney for the Trustee.
4. On November 14, 2014, an Order was granted approving the Stipulation for Substitution of Attorney for the Trustee.
5. On November 21, 2014, an Order was entered by the Court authorizing the Chapter 7 Trustee to employ Lawrence Clancy as Attorney for the Trustee.
6. On January 9, 2015, Adversary Case No. 15-02016 was commenced by the filing of a complaint by the Trustee against Joshua B. Stebnitz, Nichole M. Salazar, Molly J. Stebnitz and Kathi J. Stebnitz, seeking avoidance of Debtor's transfer of an interest he held in an LLC to Joshua B. Stebnitz, Nichole M. Salazar and Molly J. Stebnitz.
7. The caption of the adversary action is set forth above and includes the Debtor, who was permitted to intervene as a defendant.
8. All of the defendants in the adversary action filed answers to the complaint. Subsequent thereto, on July 17, 2015, a motion for summary judgment was filed by the Trustee, along with a brief supporting the motion. Subsequent thereto, on August 20,

2015, a response was filed by the Debtor, and on September 1, 2015, the Trustee filed a second brief, in further support of his motion for summary judgment.

9. On November 5, 2015, the Court, in an order entered on November 6, 2015, denied the motion for summary judgment. On the same date, Judge Beth E. Hanan was assigned to the adversary action in the place of Judge Margaret Dee McGarity.

10. Subsequently, on December 10, 2015, the parties agreed to the Court's appointment of Judge McGarity as mediator.

11. On January 15, 2016, a stipulation was filed between the Trustee and Anton Nickolai, as attorney for all defendants other than the Debtor, stipulating to judgment in favor of the Trustee and avoiding the transfer.

12. On January 19, 2016, the Debtor, as intervenor, filed an objection to the proposed order on the stipulation and hearing was set thereon, to be held on January 27, 2016.

13. On January 22, 2016, Judge McGarity, as mediator, conducted a mediation conference in her courtroom, which resulted in a settlement of the adversary action, subject to the approval of this Court, wherein the Trustee agreed to accept \$40,000 in accordance with the terms of the stipulation for dismissal of the adversary action.

14. The terms of the stipulation provided that the settlement amount was to be paid on or before May 23, 2016. In the event of nonpayment, the parties stipulated that the Trustee could enter judgment for the relief sought in the complaint, without need for further pleadings or proceedings.

## ANALYSIS OF PROPOSED COMPROMISE

15. The factors set forth in the case of *In re American Reserve*, 841 F.2d 159 (7<sup>th</sup> Cir. 1987), apply as follows:

- a. The proposed stipulation is in the estate's best interests. The Trustee recommends approval of this settlement for the following reasons:
  - i. Summary judgment was denied by the Court on the basis that there were too many factual issues that needed to be resolved at the time of trial;
  - ii. In the event the trial resulted in judgment for the Trustee, the Trustee would be required, pursuant to the terms of the Limited Liability Company Operating Agreement, to obtain up to three appraisals to determine the value of the Debtor's LLC membership he held equally with his two brothers;
  - iii. Once the appraisals were obtained, the Trustee would have to deal with the Debtor's two brothers in carrying out the terms of the Operating Agreement, which could result in substantial delays in the liquidation of the Debtor's interest in the LLC;
  - iv. The Court could rule in the defendants' favor, finding that the transfer was neither a fraudulent transfer nor a preference.

- b. Because of the complexity of the litigation, substantial additional expense including discovery proceedings could substantially impact the net resulting from the avoidance.
- c. Any inconvenience or delay, including the possibility of the Court refusing to avoid the transfer, could cause wasting of assets. If the matter is not settled, it is estimated that the estate would be delayed in closing not less than one year or longer.

Dated: January 27, 2016.

By /s/ Lawrence Clancy  
Michael F. Dubis, Trustee, by his attorney  
Lawrence Clancy  
State Bar Number 1007530  
Susan K. Allen  
State Bar Number 1056757

1200 North Mayfair Road  
Suite 430  
Milwaukee, Wisconsin 53226-3282  
[lclancy@staffordlaw.com](mailto:lclancy@staffordlaw.com)  
[sallen@staffordlaw.com](mailto:sallen@staffordlaw.com)  
414.982.2850

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Molly J. Stebnitz, and Kathi J. Stebnitz,

Defendants,

and

Daniel J. Stebnitz,

Intervenor.

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NOTICE OF TRUSTEE'S MOTION TO AUTHORIZE THE  
COMPROMISE OF AN ADVERSARY ACTION

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Lawrence Clancy, attorney for Michael F. Dubis, Trustee in Bankruptcy of the  
above-named estate, moves the Court for an order authorizing the compromise of the  
above adversary action pursuant to Federal Rule of Bankruptcy Procedure 9019. A copy

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Milwaukee, WI 53226-3282  
Phone: 414.982.2878  
Fax: 414.982.2889  
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of the motion may be viewed at the U.S. Courthouse, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the Court to approve the relief sought in the motion, or if you want the Court to consider your views on the application, then on or before 21 days after service of this notice, you or your attorney must:

1. File with the Court a written objection stating the legal and factual basis for your objection at the following address:

Clerk of the Bankruptcy Court  
U.S. Courthouse  
517 East Wisconsin Avenue, Room 126  
Milwaukee, WI 53202

2. If you mail your objection to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

3. You must also mail a copy of your objection to:

Lawrence Clancy, Attorney for Chapter 7 Trustee  
Stafford Rosenbaum LLP  
1200 North Mayfair Road, Suite 430  
Milwaukee, WI 53226-3282

U.S. Trustee  
U.S. Courthouse  
517 East Wisconsin Avenue  
Suite 430  
Milwaukee, WI 53202

4. Attend the hearing at such date and time as may be scheduled by the Court.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an Order granting that relief.

Dated: January 27, 2016.

By /s/ Lawrence Clancy  
Michael F. Dubis, Trustee, by his attorney  
Lawrence Clancy  
State Bar Number 1007530  
Susan K. Allen  
State Bar Number 1056757

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[sallen@staffordlaw.com](mailto:sallen@staffordlaw.com)  
414.982.2850